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HIGH COURT OF CHHATTISGARH AT BILASPUR

Misc. Appeal No.730 of 2006

CORAM: Hon'ble Shri S.R. Nayak, CJ
& Hon'ble Shri Dilip Raosaheb Deshmukh, J.

Appellant : Bajaj Allianz General Insurance Company, Through – Branch Manager, Shiv Mohan Bhawan, Vidhan Sabha Road, Raipur C.G.
(Non-Applicant no.3)

Versus

Respondents
: 1. Ramkumar Rajak S/o Phekuram Rajak, aged about 42 years.
: 2. Smt. Kanti Bai W/o Ram Kumar Rajak, aged about 39 years, Both are resident of Katiyapara, Udai Chowk, Santoshi Mandir, Juna Bilaspur C.G.
: 3. Sanjay Chauhan S/o Shatrughan Chauhan, aged about 30 years
(Driver – Non-applicant No. 1)
4. Gopal Singh Thakur S/o Shambhu Singh Thakur, aged about 32 years,
Both are resident of village Pausara, Tahsil and District Bilaspur.
(Owner- Non applicant No. 2)

Misc. Appeal No. 731 of 2006

Appellant : Bajaj Allianz General Insurance Company, Through – The Branch Manager, Shiv Mohan Bhawan, Vidhan Sabha Road, Raipur C.G.
(Non-Applicant no.3)

Versus

Respondents
: 1. Indira Bai W/o Late Mohtab, aged about 48 years, R/o Village Dhuripara, Police Station Koni, District Koni, District Bilaspur C.G.
: 2. Sanjay Chauhan S/o Shatrughan Chauhan, aged about 30 years
(Driver-Non-applicant No. 1)
: 3. Gopal Singh Thakur, S/o Shambhu Singh Thakur, aged about 32 years,
Both are resident of Village Pausara, Tahsil and District Bilaspur C.G.
(owner-Non-applicant No. 2)

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Misc. Appeal No. 722 of 2006

Appellant : Bajaj Allianz General Insurance Company, Through – Branch Manager, Shiv Mohan Bhawan, Vidhan Sabha Road, Raipur C.G. **(Non-Applicant no.3)**

Versus

Respondents :
1. Sukhiram Suryavanshi, S/o Phenku Suryavanshi, aged about 34 years, R/o Village Pasaura, Police Station Koni, District Koni, District Bilaspur C.G.
2. Sanjay Chauhan S/o Shatrughan Chauhan, aged about 30 years **(Driver-Non-applicant No. 1)**
3. Gopal Singh Thakur, S/o Shambhu Singh Thakur, aged about 32 years,
Both are resident of Village Pausara, Tahsil and District Bilaspur **(owner-Non-applicant No. 2)**

Misc. Appeal No. 728 of 2006

Appellant : Bajaj Allianz General Insurance Company, Through – The Branch Manager, Shiv Mohan Bhawan, Vidhan Sabha Road, Raipur C.G. **(Non-Applicant no.3)**

Versus

Respondents :
1. Bhuwan S/o Haricharan, aged about 40 years, R/o Village Pasaura, Police Station Koni, District Koni, District Bilaspur C.G.
2. Sanjay Chauhan S/o Shatrughan Chauhan, aged about 30 years **(Driver-Non-applicant No. 1)**
3. Gopal Singh Thakur, S/o Shambhu Singh Thakur, aged about 32 years,
Both are resident of Village Pausara, Tahsil and District Bilaspur C.G. **(owner-Non-applicant No. 2)**

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Misc. Appeal No. 723 of 2006

Appellant : Bajaj Allianz General Insurance Company Limited, Through – The Branch Manager, Shiv Mohan Bhawan, Vidhan Sabha Road, Raipur. **(Non-Applicant no.3)**

Versus

Respondents :
1. Smt. Uma Bai Nirmalkar, W/o Late Shankar @ Bauna Nirmalkar, aged about 24 years.
2. Raju Nirmalkar, S/o Late Shankar @ Bauna Nirmalkar, aged about 12 years.
3. Vicky Nirmalkar S/o Late Shankar @ Bauna Nirmalkar, aged about 10 years.
4. Dhirendra Nirmalkar, S/o Late Shankar @ Bauna Nirmalkar, aged about 8 years.
5. Vijay Nirmalkar, S/o Late Shankar @ Bauna Nirmalkar, aged about 4 years

   The respondents No. 2 to 5 through mother, Mother Smt. Uma Bai, W/o Late Shankar **(Claimant)**
6. Smt. Harmati Nirmalkar W/o Jakala Nirmalkar, aged about 65 years, All are resident of village- Pausara Tahsil & Dist. Bilaspur.
7. Sanjay Chauhan, S/o Shatrughan Chauhan, aged about 30 years, **(Driver – Non-applicant No. 1)**
8. Gopal Singh Thakur, S/o Shambhu Singh, aged about 32 years
   Both are resident of Vill. Pausara, Tahsil & Dist. Bilaspur
   (owner- Non-applicant No. 2)

M.A.No.729 of 2006

Appellant : Bajaj Allianz General Insurance Company, Through – Branch Manager, Shiv Mohan Bhawan, Vidhan Sabha Road, Raipur C.G. **(Non-Applicant no.3)**

Versus

Respondents :
1. Smt. Urmila Bai W/o Late Chaitram Suryavanshi, aged about 30 years.
2. Anand Kumar S/o Late Chaitram Suryavanshi, aged about 12 years.

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: 3. Ashish Kumar S/o Late Chaitram Suryavanshi, aged about 4 years.
: 4. Ku. Anjali, D/o Late Chaitram Suryavanshi, aged about 9 years.
: 5. Ku. Asha D/o Late Chaitram Suryavanshi, aged about 2 years **(Claimants)**

The respondents No.2 to 5 through their natural guardian mother Smt. Urmila Bai W/o Late Chaitram Suryavanshi, aged about 30 years and all are resident of village Pausara, Police Station Koni, Tahsil and District Bilaspur C.G.

: 6. Sanjay Chauhan, S/o Shatrughan Chauhan, aged about 30 years,
(Driver – Non-applicant No. 1)

7. Gopal Singh Thakur, S/o Shambhu Singh, aged about 32 years.
Both are resident of Vill. Pausara, Tahsil & Dist. Bilaspur
(owner- Non-applicant No. 2)

Shri Rajesh Pandey, learned counsel for the appellant.
Smt. Meera Jaiswal, learned counsel for the claimants.
Shri Vimalesh Bajpai, learned counsel for respondents No.1 & 2 (M.A.No.730 of 2006)

ORAL ORDER

(Passed on 04th October, 2006)

The following oral order of the Court was passed by **S.R. Nayak, C.J.**

In all these appeals i.e. M.A.No.730 of 2006, M.A.No.731 of 2006, M.A.No.722 of 2006, M.A.No.728 of 2006, M.A.No. 723 of 2006 and M.A.No.729 of 2006 preferred by the Insurance-Company under Section 173 of the Motor Vehicles Act, 1988 (for short the Act), the only question raised and argued is that though the M.A.C.T. has rightly held that the appellant-Insurance Company is under no legal obligation to pay compensation to the claimants, it has directed the Insurance-Company to

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pay compensation in the first instance, and then to recover the same from the owner of the motor vehicle involved in the accident.

2. In M.A.Nos.731 of 2006, 723 of 2006 and 729 of 2006, the respondents-claimants have filed cross-objections for enhancement of compensation.

3. We have heard learned counsel for the parties. Shri Rajesh Pandey, learned counsel appearing for the appellant-Insurance Company placing strong reliance on the judgment of the High Court of Bombay in the case of **New India Assurance Co. Ltd. v. Diwakar and Others**[1] would contend that the M.A.C.T. having held rightly that the Insurance-Company is under no legal obligation to pay compensation on the ground that there was breach of conditions of policy on the point of the owner of the motor vehicle involved in the accident, seriously erred in law in directing the Insurance-Company to pay a compensation in the first instance to the claimants and then to recover the same from the owner of the motor vehicle.

4. *Per contra* learned counsel appearing for the claimants, placing reliance on Judgments of the Apex Court in the case of **National Insurance Co. Ltd. v. Baljit Kaur and others**[2], **National Insurance Co. Ltd. v. Challa Bharathamma and others**[3], **Pramod Kumar Agrawal and another v. Mushtari Begurm (Smt) and others**[4] and **National Insurance Co. Ltd. v. Bommithi Subbhyamma and others**[5] would

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1. 2006 (2) TAC 937 (Bom.), 2. (2004) 2 SCC 1 3. 2004 AIR SCW 5301
4. (2004) 8 SCC 667 5. 2005 (2) TAC. 1 (SC)

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submit that the direction issued by the M.A.C.T. to the appellant-Insurance Company to pay the compensation in the first instance and to recover the same from the owner is unexceptionable and is in accordance with the settled position in law.

5. Smt. Meera Jaiswal, learned counsel who appeared for the cross-objectors in M.A.Nos.731 of 2006, 723 of 2006 and 729 of 2006 while praying for enhancement of compensation would submit that having regard to the place and time of the accident and the status of the deceased, the M.A.C.T. is not justified in taking the monthly income of the deceased at notional level for the purpose of computing loss of dependency. Learned counsel would submit that under no circumstance the monthly income of the deceased should have been taken at a rate lesser than Rs.3000/- per month for the purpose of computing loss of dependency. She would also submit that what has been awarded by the M.A.C.T. under conventional heads, such as, loss of consortium to the widow, loss of estate, loss of love and affection to the minor children of the deceased and funeral expenses is also on lower side.

6. Having heard learned counsel for the parties, the following two points arise for decision:

(i) Whether the M.A.C.T. has acted legally in directing the appellant-Insurance Company to pay the compensation to the claimants in the first instance and then to recover the same from the owner of the motor vehicle involved in the accident?

(ii) Whether the compensation awarded by the M.A.C.T. to the respondents-Claimants in M.A.Nos.731 of 2006, 723 of 2006 and 729 of 2006, in the facts and circumstances of the case and the evidence on

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record, could be regarded as just and reasonable compensation within the contemplation of the Act and if not, what is just and reasonable compensation?

Point No.I

This point need not detain the Court for long because this point is squarely covered by the aforesaid judgments of the Supreme Court. The settled position is that even in a case where the M.A.C.T. finds that the owner of the motor vehicle involved in the accident alone is under legal liability to pay compensation on account of breach of conditions of insurance policy, even then, it is open for the M.A.C.T. to direct the Insurance Company concerned to pay compensation in the first instance and then to recover the same from the owner of the motor vehicle involved in the accident in an independent legal action like the Suit or in the Execution Proceedings initiated to execute the award passed by the M.A.C.T. The judgment of the Bombay High Court cited by Shri Rajesh Pandey, learned counsel for the Insurance-Company, is of no help to the Insurance-Company, because, that judgment, as we could see, does not refer to or consider the binding judgments of the Supreme Court.

Point No.II

It is quite often held and reiterated by the Courts that the compensation to be determined by the M.A.C.T. under the Act should be just and reasonable though no amount of compensation would really redress the sufferings and agonies or loss sustained by the victims of accident whether it is a case of death or a case of injury. It is also well settled that while computing loss of

dependency in the case of death, the Court would have to take into account the time and place of the accident, and the standard to be applied cannot be static irrespective of time and place factors.

7. In the three cross-objections to which reference is made (supra), the deceased were in prime age group when they died in the accident. They left behind them young widows, children and parents. It is true that no concrete substantive evidence is laid by the claimants before the M.A.C.T. to substantiate that the deceased concerned was earning any particular sum of money as monthly income. Simply because such evidence is not available before the M.A.C.T., it could not be said that the M.A.C.T. is justified in taking the monthly income, in all the three aforesaid cases, at notional level of Rs.15,000/- per annum. The Supreme Court and many High Courts, in recent times, have opined that even in the case of an ordinary housewife or unskilled manual labourer, Rs.300/- should be taken as monthly income for the purpose of computing loss of dependency. It is reasonable to infer that the deceased, in each of these cases, were earning earned not less than Rs.100/- per day or Rs.3,000/- per month to have atleast two square meals to themselves and their dependents and a shelter over their head. We say this keeping in mind the time and place of the accident. The accident took place only recently i.e. in the year 2005. If we take the monthly income of the deceased in each of these cases at Rs.3000/- per month and deduct one-third of the same towards personal expenses of the deceased, the total loss of dependency would come to Rs.3,12,000/- in the case of cross-objectors in M.A.No.731 of 2006; Rs.4,32,000/- in the case of cross-objectors in

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M.A.No.723 of 2006, and Rs.3,60,000/- in the case of cross-objectors in M.A.No.729 of 2006.

8. We are of the considered opinion, as opined in earlier several orders, that the compensation to be awarded under conventional heads should reflect time and place. In other words, compensation to be paid under conventional heads cannot be static for all times and for all places. It is because even conventional compensation is compensation and not a gratuitous payment nor a token payment. Taking into account the time and place of the accident and demise in these cases, we are of the considered opinion that what has been awarded under the conventional heads are on lower side. Therefore, we award a sum of Rs.25,000/- in each of these cases towards 'loss of consortium' to the widows concerned, Rs.25,000/- towards 'loss of estate'. What has been awarded towards 'loss of love and affection is just and reasonable. There is no warrant for any enhancement under the said head.

9. In the result and for the foregoing reasons, we dismiss all these appeals filed by the Insurance-Company.

(i) We allow Cross-Objections filed in M.A.No.731 of 2006 in part, and in substitution of the impugned award, we award total compensation of Rs.3,69,000/- under the following heads:

Cross-objectors in M.A.No.731 of 2006

(i)	Towards loss of dependency (24,000 x 13)	=	Rs.3,12,000/-
(ii)	Towards loss of Consortium	=	Rs. 25,000/-
(iii)	Towards loss of Estate	=	Rs. 25,000/-
(iv)	Towards loss of love and affection	=	Rs. 5,000/-

(v)	Funeral expenses	=	Rs. 2,000/-
	Total:		Rs.3,69,000/-

(ii) Similarly, we allow Cross-Objections filed in M.A.No.723 of 2006 in part, and in substitution of the impugned award, we award total compensation of Rs.5,09,000/- under the following heads:

Cross-objectors in M.A.No.723 of 2006

(i)	Towards loss of dependency (24,000 x 18)	=	Rs.4,32,000/-
(ii)	Towards loss of Consortium	=	Rs. 25,000/-
(iii)	Towards loss of Estate	=	Rs. 25,000/-
(iv)	Towards loss of love and affection to minor children (respondents No.2 to 5)	=	Rs. 20,000/-
(v)	Funeral expenses	=	Rs. 2,000/-
	Total	=	Rs.5,04,000/-

(iii) We allow Cross-Objections in M.A.No.729 of 2006 in part, and in substitution of the impugned award, we award total compensation of Rs.4,37,000/- under the following heads:

Cross-objectors in M.A.No.729 of 2006

(i)	Towards loss of dependency (24,000 x 15)	=	Rs.3,60,000/-
(ii)	Towards loss of Consortium	=	Rs. 25,000/-
(iii)	Towards loss of Estate	=	Rs. 25,000/-
(iv)	Towards loss of love and affection to minor children (respondents No.2 to 5)	=	Rs. 20,000/-
(v)	Funeral expenses	=	Rs. 2,000/-
	Total	=	Rs.4,32,000/-

In all these cases, we award interest at 6% per annum from the date of claim petition till payment.

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10. In the facts and circumstances of the case, the parties in all these appeals and the cross-objections shall bear their respective costs.

11. The Insurance-Company shall deposit the balance of compensation before the M.A.C.T. within six weeks from today and on such deposit being made, the M.A.C.T. shall invest/disburse the same in the same proportions, if any, specified by it in the impugned awards.

Sd/-
Chief Justice

Sd/-
Dilip Raosaheb Deshmukh
Judge

Anjani